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**TITLE 470 DIVISION OF FAMILY RESOURCES**

**Proposed Rule**  
LSA Document #11-725

**DIGEST**

Amends [470 IAC 1-4-3](#), [470 IAC 3-18-23](#), and [470 IAC 11.1-5-1](#) to make various administrative changes to the time limits and procedures for filing appeals requests by applicants or recipients. Effective 30 days after filing with the Publisher.

[IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses](#)

[470 IAC 1-4-3](#); [470 IAC 3-18-23](#); [470 IAC 11.1-5-1](#)

SECTION 1. [470 IAC 1-4-3](#) IS AMENDED TO READ AS FOLLOWS:

**[470 IAC 1-4-3](#) Filing an appeal; scheduling appeals**

**Authority:** [IC 12-13-2-3](#); [IC 12-13-5-3](#)

**Affected:** [IC 4-21.5](#); [IC 12-13](#); [IC 31-16-15](#)

Sec. 3. (a) Any party complaining of any division action in accordance with this rule may file a request for an administrative hearing as provided in this section.

(b) Unless otherwise provided for by statute, regulation, or rule, appeal requests by recipients or applicants shall be filed in writing with the county office of **the division of family and children, the division of family and children, resources** or the **office of hearings and appeals section** of the family and social services administration **as provided on the notice of agency action. The appeal request must be received by close of business** not later than: ~~thirty (30):~~

(1) **thirty-three (33)** days following the effective date of the action being appealed; **or**

(2) **thirty-three (33) days from the date of the denial notice;**

**whichever is later.** Applicant and recipient appeal hearings shall be conducted at a reasonable time, date, and place.

(c) "Close of business" means 4:30 p.m., local time, on a business day where the appeal is received. If the thirty-third day is a:

(1) Saturday;

(2) Sunday;

(3) state holiday; or

(4) day the office in which the act is to be done is closed during regular business hours;

**the appeal request must be received by the close of business the next business day. An appeal request received after close of business on the thirty-third day is untimely and invalid.**

~~(c)~~ (d) Unless otherwise provided for by statute, regulation, or rule, appeal requests by licensees or prospective licensees shall:

(1) be filed in writing by the aggrieved party or its attorneys at law;

(2) set out each objection to the division's actions as well as cite the legal reasons therefor; and

(3) be delivered to the division of family and children **resources by close of business** within ~~thirty (30)~~

**thirty-three (33)** days after receipt of the initial notice upon which the appeal is premised.

Failure to state objections and the legal reasons therefor, in a timely manner, shall be deemed a waiver of such objections. Licensee appeal hearings will be conducted in Indianapolis, Indiana unless the appellant is otherwise notified.

~~(d)~~ (e) Appeals by Medicaid applicants and recipients concerning Medicaid eligibility or services shall be filed and conducted in accordance with rules promulgated by the office of **the** secretary of family and social services under 405 IAC. Medicaid provider appeals shall be filed and conducted in accordance with rules promulgated by the office of **the** secretary of family and social services under 405 IAC and the provisions of [IC 4-21.5](#).

~~(e)~~ **(f)** All requests for income withholding appeals by child support obligors in Title IV-D cases shall be made and all income withholding appeal hearings shall be conducted in accordance with the provisions of [IC 31-2-10](#); [IC 31-16-15](#). Child support income withholding hearings will be conducted in Indianapolis, Indiana, unless the obligor is otherwise notified.

~~(f)~~ **(g)** The division of family ~~and children resources~~ or the **office of** hearings and appeals ~~section~~ of the family and social services administration, upon application of any party, or in its own discretion, may consolidate appeals to promote administrative efficiency. Hearings may only be consolidated in cases in which the sole issue involved is one of federal or state law or policy.

~~(g)~~ **(h)** Any party filing an appeal under this rule is not excused from exhausting all interim procedures that may be required by statute or rule for administrative review prior to the filing of an appeal. Any issues not preserved in a timely manner within the interim review procedures are waived and shall not be an issue during the evidentiary hearing.

~~(h)~~ **(i)** The director of the division of family ~~and children resources~~ is responsible for the appointment of administrative law judges to conduct hearings under this rule. The division of family ~~and children resources~~ or the **office of** hearings and appeals ~~section~~ of the family and social services administration will schedule evidentiary hearings and issue notices to the parties regarding the date, time, and location of the scheduled hearing.

~~(i)~~ **(j)** Continuance of a hearing will be granted only for good cause shown. An objection to a request for a continuance shall be considered before a continuance is granted or denied. Requests for a continuance shall be in writing and accompanied by adequate documentation of the reasons for the request. Good cause includes:

- (1) inability to attend the hearing because of a serious physical or mental condition;
- (2) incapacitating injury;
- (3) death in the family;
- (4) severe weather conditions making it impossible to travel to the hearing;
- (5) unavailability of a witness and the evidence cannot be obtained otherwise; or
- (6) other reasons similar to those listed in this section.

If the appellant is represented by counsel, the request for continuance must also include alternative dates for the scheduling of a new hearing. However, a new hearing may be scheduled without respect to the requested date if such date cannot be accommodated or confirmed with the requesting attorney within a reasonable time of the request.

*(Division of Family Resources; [470 IAC 1-4-3](#); filed May 22, 1987, 12:45 p.m.: 10 IR 2278, eff Jul 1, 1987; filed Jun 19, 1996, 9:00 a.m.: 19 IR 3074; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235; readopted filed Oct 24, 2007, 11:25 a.m.: [20071121-IR-470070448RFA](#))*

SECTION 2. [470 IAC 3-18-23](#) IS AMENDED TO READ AS FOLLOWS:

**[470 IAC 3-18-23](#) Denial of application**

**Authority:** [IC 12-13-5-3](#); [IC 12-17.2-3.5-15](#)

**Affected:** [IC 4-21.5-3](#); [IC 12-17.2-3.5](#)

Sec. 23. (a) The division shall deny an application when an applicant fails to meet the requirements of this rule.

(b) The division shall provide written notification of denial in the form of a notice of order in accordance with [IC 4-21.5-3](#) stating the reason or reasons for the denial.

(c) An ~~administrative hearing concerning the denial shall be provided upon written request by the applicant~~ **may appeal the denial of an application. The appeal request must be filed in accordance with the procedures and timelines of [470 IAC 1-4-3](#).**

(d) A request for an administrative hearing for a denial must be made prior to the effective date of the order.

(e) The administrative hearing shall be scheduled within sixty (60) calendar days of the written request.

(f) The administrative hearing shall be held in accordance with [470 IAC 1-4](#).

(g) The division shall issue a decision within sixty (60) calendar days after the conclusion of the hearing.

*(Division of Family Resources; [470 IAC 3-18-23](#); filed Oct 14, 2004, 2:50 p.m.: 28 IR 956; readopted filed Oct 24, 2007, 11:25 a.m.: [20071121-IR-470070448RFA](#))*

SECTION 3. [470 IAC 11.1-5-1](#) IS AMENDED TO READ AS FOLLOWS:

**[470 IAC 11.1-5-1](#) Provider and recipient appeals**

**Authority:** [IC 12-13-2-3](#); [IC 12-13-5-3](#)

**Affected:** [IC 12-16](#)

Sec. 1. (a) All appeals of division's adverse actions, by either providers or recipients in the Indiana hospital care for the indigent program, shall be conducted pursuant to [under 470 IAC 1-4](#).

(b) The administrative law judge shall determine the scheduling and location of said appeal hearing taking into consideration the needs of all the parties. As provided for in ~~[470 IAC 1-4-3\(d\)](#)~~, [470 IAC 1-4-3\(e\)](#), the location of the appeal hearings for applicants or patients shall be in the county of their residence.

(c) The administrative law judge shall provide for an opportunity to hold part or all of the appeal hearing by means of a telecommunication device providing that:

- (1) it is requested by a party;
- (2) all other parties agree to its use in the manner suggested;
- (3) such equipment is available to the administrative law judge whereby a record may be made of such telecommunication hearing or portions thereof; and
- (4) the administrative law judge is confident that the use of such telecommunication devices will not compromise the integrity of the evidentiary hearing process in the case ~~which~~ **that** is then pending.

(d) The Indiana division of family ~~and children~~ **resources** shall be deemed a party to all administrative appeals filed under this section.

(e) In the event that a patient or applicant requests an administrative appeal hearing, then that individual must file ~~said the request pursuant to~~ [under 470 IAC 1-4-3\(b\)](#).

(f) In the event that a hospital or other provider requests an appeal hearing, then the hospital or other provider must file ~~said the requests pursuant to~~ ~~[470 IAC 1-4-3\(e\)](#)~~. [under 470 IAC 1-4-3\(d\)](#).

*(Division of Family Resources; [470 IAC 11.1-5-1](#); filed May 25, 1989, 1:45 p.m.: 12 IR 1862; filed Oct 3, 1997, 4:50 p.m.: 21 IR 378; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235; readopted filed Oct 24, 2007, 11:25 a.m.: [20071121-IR-470070448RFA](#))*

**[Notice of Public Hearing](#)**

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